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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 LUXOTTICA GROUP S.P.A., an
Italian corporation,

13 Plaintiff,

14 v.

15 WEB 4 HALF, LLC, a North Carolina
16 limited liability company, et al.,

17 Defendants.

Case No. 3:15-cv-01665-JAH-NLS

ANSWER, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS

DEMAND FOR JURY TRIAL

Judge: Hon. Anthony J. Battaglia

18
19
20 Now comes the Defendant, WEB 4 HALF LLC (“Defendant” or “Web 4
21 Half”), by and through counsel, for its answer to the Complaint of the Plaintiff,
22 Luxottica Group S.P.A. (“Plaintiff” or “Luxottica”), states as follows:

23 **FIRST DEFENSE**

24 **(Failure to State a Claim Under Fed. R. Civ. P. 12(b)(6) –**

25 **Third Claim for Relief)**

26 Luxottica’s Third Claim for Relief, trademark dilution under 15 U.S.C.
27 § 1125(c), fails to state a claim upon which relief can be granted because that claim,
28 at best, alleges only legal conclusions, elements of the cause of action, and bare

1 assertions devoid of further factual enhancement. Thus, Luxottica's Third Claim for
 2 Relief is not constituted of well-pled facts and should be dismissed under Rule
 3 12(b)(6) accordingly. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–684 129 S.Ct. 1937,
 4 1949–52 (2009).

5 **SECOND DEFENSE**

6 **(Failure to State a Claim Under Fed. R. Civ. P. 12(b)(6) – All Claims)**

7 Luxottica's Complaint fails to state a claim for relief against Web 4 Half upon
 8 which relief can be granted and should be dismissed accordingly under Rule
 9 12(b)(6) of the Federal Rules of Civil Procedure.

10 **THIRD DEFENSE**

11 **(Response to Numbered Paragraphs)**

12 Web 4 Half denies each and every allegation in Luxottica's Complaint,
 13 including its prayers for relief, except those that have been expressly admitted
 14 herein. Web 4 Half further responds to the specific allegations of Plaintiff's
 15 Complaint, in accordance with the order and number of the paragraphs in which
 16 they are set out, as follows:

17 **THE PARTIES**¹

18 1. Web 4 Half lacks sufficient knowledge or information to form a basis
 19 or belief as to the truthfulness of the allegations in paragraph 1 of the Complaint and
 20 therefore denies the same.

21 2. Web 4 Half admits that it is a limited liability company organized and
 22 existing under the laws of the state of North Carolina and has a principal place of
 23 business at 2327 Englert Drive, Suite 302, Durham, North Carolina 27713. Except
 24 as expressly admitted, Web 4 Half denies the remaining allegations in paragraph 2
 25 of the Complaint.

26
 27 ¹ For ease of reference, Web 4 Half adopts in this Answer certain headings and certain of the
 28 capitalized terms used by Plaintiff in its Complaint. The use of these headings and terms is not
 an admission of any of the allegations or characterizations in the Complaint, all of which are
 denied except as expressly admitted herein. -2-

1 3. Web 4 Half admits that it has conducted business in this judicial district
2 but denies having committed any federal or common law trademark infringement,
3 false designation of origin, trademark dilution, or unfair competition.

4 **JURISDICTION AND VENUE**

5 4. Web 4 Half admits that this action alleges the causes of action that
6 Luxottica states in paragraph 4 of the Complaint. Except as expressly admitted, the
7 allegations in paragraph 4 of the Complaint are denied.

8 5. Web 4 Half admits that this Court has original subject matter
9 jurisdiction over the claims asserted by Luxottica. Web 4 Half denies that this Court
10 has original subject matter jurisdiction pursuant to 15 U.S.C. § 1116(a).

11 6. Web 4 Half admits that this Court has personal jurisdiction over Web 4
12 Half, but specifically denies having sold infringing eyewear. Except as expressly
13 admitted, the allegations in paragraph 6 of the Complaint are denied.

14 7. Web 4 Half admits that venue is proper in this judicial district under 28
15 U.S.C. § 1391 (b)–(d).

16 **GENERAL ALLEGATIONS**

17 8. Web 4 Half lacks sufficient knowledge or information to form a basis
18 or belief as to the truthfulness of the allegations in paragraph 8 of the Complaint,
19 and, therefore, it denies the same.

20 9. Web 4 Half denies that Luxottica’s use of the term “WAYFARER” has
21 been exclusive. Web 4 Half lacks sufficient knowledge or information to form a
22 basis or belief as to the truthfulness of the remaining allegations in paragraph 9 of
23 the Complaint, and therefore, it denies the same.

24 10. Web 4 Half denies the allegations in paragraph 10 of the Complaint.

25 11. Web 4 Half admits that records available through the Trademark Status
26 and Document Retrieval (“TSDR”) system on the United States Patent and
27 Trademark Office (“USPTO”) website show that Luxottica is the owner of
28 Trademark Registration No. 595,513.

1 12. Web 4 Half admits that the records available through the TSDR system
2 on the USPTO website show that Trademark Registration No. 595,513 was
3 registered with the USPTO on September 21, 1954 for sunglasses. Web 4 Half
4 admits that the document attached to the Complaint as Exhibit A speaks for itself.

5 13. Web 4 Half denies the allegations in paragraph 13 of the Complaint.

6 14. Web 4 Half admits that Luxottica has alleged infringement of its
7 alleged mark following its ownership of the alleged mark. Web 4 Half specifically
8 denies having infringed Luxottica's alleged mark. Except as expressly admitted, the
9 allegations in paragraph 14 of the Complaint are denied.

10 15. Web 4 Half denies the allegations in paragraph 15 of the Complaint.

11 16. Web 4 Half denies the allegations in paragraph 16 of the Complaint.

12 17. Web 4 Half denies the allegations in paragraph 17 of the Complaint.

13 18. Web 4 Half denies the allegations in paragraph 18 of the Complaint.

14 19. Web 4 Half admits that Luxottica has not given Web 4 Half an express
15 license, permission, or authority to use Luxottica's alleged mark, but specifically
16 denies that any use of Luxottica's alleged mark constitutes federal or common law
17 trademark infringement, false designation of origin, trademark dilution, or unfair
18 competition.

19 20. Web 4 Half denies the allegations in paragraph 20 of the Complaint.

20 21. Web 4 Half denies the allegations in paragraph 21 of the Complaint.

21 **ANSWER TO FIRST CLAIM FOR RELIEF**

22 **(Federal Trademark Infringement)**

23 **(15 U.S.C. § 1114)**

24 22. Web 4 Half repeats its responses to paragraphs 1–22 of the Complaint
25 as if set forth fully herein.

26 23. Web 4 Half admits that this claim alleges trademark infringement under
27 15 U.S.C. § 1114.

28 24. Web 4 Half denies the allegations in paragraph 24 of the Complaint.

1 25. Web 4 Half denies the allegations in paragraph 25 of the Complaint.

2 26. Web 4 Half denies the allegations in paragraph 26 of the Complaint.

3 27. Web 4 Half denies the allegations in paragraph 27 of the Complaint.

4 28. Web 4 Half denies the allegations in paragraph 28 of the Complaint.

5 29. Web 4 Half denies the allegations in paragraph 29 of the Complaint.

6 **ANSWER TO SECOND CLAIM FOR RELIEF**

7 **(Federal Unfair Competition & False Designation of Origin)**

8 **(15 U.S.C. § 1125(a))**

9 30. Web 4 Half repeats its responses to paragraphs 1–22 of the Complaint
10 as if set forth fully herein.

11 31. Web 4 Half admits this claim alleges unfair competition and false
12 designation of origin under 15 U.S.C. § 1125(a).

13 32. Web 4 Half denies the allegations in paragraph 32 of the Complaint.

14 33. Web 4 Half denies the allegations in paragraph 33 of the Complaint.

15 34. Web 4 Half denies the allegations in paragraph 34 of the Complaint.

16 35. Web 4 Half denies the allegations in paragraph 35 of the Complaint.

17 36. Web 4 Half denies the allegations in paragraph 36 of the Complaint.

18 **ANSWER TO THIRD CLAIM FOR RELIEF**

19 **(Federal Trademark Dilution)**

20 **(15 U.S.C. § 1125(c))**

21 37. Web 4 Half repeats its responses to paragraphs 1–37 of the Complaint
22 as if set forth fully herein.

23 38. Web 4 Half admits this claim alleges trademark dilution under 15
24 U.S.C. § 1125(c).

25 39. Web 4 Half lacks sufficient knowledge or information to form a basis
26 or belief as to the truthfulness of the allegations in paragraph 39, and therefore,
27 denies the same.

1 40. Web 4 Half lacks sufficient knowledge or information to form a basis
2 or belief as to the truthfulness of the allegations in paragraph 40, and therefore,
3 denies the same.

4 41. Web 4 Half denies the allegations in paragraph 41 of the Complaint.

5 42. Web 4 Half denies the allegations in paragraph 42 of the Complaint.

6 43. Web 4 Half denies the allegations in paragraph 43 of the Complaint.

7 44. Web 4 Half denies the allegations in paragraph 44 of the Complaint.

8 45. Web 4 Half denies the allegations in paragraph 45 of the Complaint.

9 46. Web 4 Half denies the allegations in paragraph 46 of the Complaint.

10 **ANSWER TO FOURTH CLAIM FOR RELIEF**

11 **(California Common Law Trademark Infringement)**

12 47. Web 4 Half repeats its responses to paragraphs 1–47 of the Complaint
13 as if set forth fully herein.

14 48. Web 4 Half admits this claim alleges trademark infringement under
15 California common law.

16 49. Web 4 Half denies the allegations in paragraph 49 of the Complaint.

17 50. Web 4 Half denies the allegations in paragraph 50 of the Complaint.

18 51. Web 4 Half denies the allegations in paragraph 51 of the Complaint.

19 52. Web 4 Half denies the allegations in paragraph 52 of the Complaint.

20 **ANSWER TO FIFTH CLAIM FOR RELIEF**

21 **(California Unfair Competition)**

22 53. Web 4 Half repeats its responses to paragraphs 1–53 of the Complaint
23 as if set forth fully herein.

24 54. Web 4 Half admits this claim alleges unfair competition under
25 California Business & Professions Code § 17200, et seq. and California common
26 law.

27 55. Web 4 Half denies the allegations in paragraph 55 of the Complaint.

28 56. Web 4 Half denies the allegations in paragraph 56 of the Complaint.

1 57. Web 4 Half denies the allegations in paragraph 57 of the Complaint.

2
3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 Upon information and belief, and for the reasons set forth in paragraphs 6 –
6 18 of Web 4 Half’s Counterclaim which are fully incorporated by reference as if set
7 forth fully herein, Luxottica’s alleged mark, the term “WAYFARER,” has become
8 generic when used in connection with a mid-century modern style of eyewear
9 having trapezoidal lenses, a thick frame, and protrusions along the upper corners.

10 **SECOND AFFIRMATIVE DEFENSE**

11 Luxottica’s claims are barred by the doctrine of fair use because Web 4 Half
12 is not using Luxottica’s alleged trademark as a source indicator but, rather, as a
13 generic term that has come to mean a mid-century modern style of eyewear having
14 trapezoidal lenses, a thick frame, and protrusions along the upper corners.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Upon information and belief, and for the reasons set forth in paragraphs 6 –
17 18 of Web 4 Half’s Counterclaim which are fully incorporated by reference as if set
18 forth fully herein, there is and has long been widespread use of Luxottica’s alleged
19 mark by numerous third parties throughout the relevant market and trade in
20 connection with the advertising and sale of a mid-century modern style of eyewear
21 having trapezoidal lenses, a thick frame, and protrusions along the upper corners,
22 which uses, on information and belief, neither Luxottica nor its predecessors-in-
23 interest challenged, and Luxottica has therefore acquiesced and/or consented to
24 nonexclusive use of the term in connection with such goods.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 For the reasons set forth in the Third Defense and in paragraphs 6 – 18 of
27 Web 4 Half’s Counterclaim which are fully incorporated by reference as if set forth
28

1 fully herein, each of the purported claims set forth in this Complaint is barred by the
2 doctrines of waiver, acquiescence, and/or estoppel.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 The claims in the Complaint are barred by the doctrine of laches because, as
5 alleged above in connection with the Third and Fourth Affirmative Defenses and for
6 the reasons set forth in paragraphs 6 – 18 of Web 4 Half’s Counterclaim which are
7 fully incorporated by reference as if set forth fully herein, Luxottica and/or its
8 predecessors-in-interest unreasonably delayed efforts to enforce alleged rights in
9 Luxottica’s alleged mark, despite full awareness of the widespread third party use of
10 such alleged mark in the relevant trade and by consumers.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 There is no basis for the award of attorneys’ fees under on 15 U.S.C. § 1117
13 because Plaintiff has not alleged any exceptional circumstances meriting such
14 award.

15 **RESERVATION OF AFFIRMATIVE DEFENSES**

16 Web 4 Half reserves all affirmative defenses under Rule 8(c) of the Federal
17 Rules of Civil Procedure and any other defenses, at law or in equity, that may be
18 available now or that may become available in the future, based on discovery or
19 other factual investigation of this case.

20 **COUNTERCLAIM**

21 Pursuant to Federal Rule of Civil Procedure 13, Defendant and Counter-
22 Claimant Web 4 Half, LLC (“Web 4 Half”), counterclaims against Plaintiff and
23 Counter-Defendant Luxottica Group S.P.A. (“Luxottica”), as follows:
24

25 **NATURE OF THE ACTION**

26 1. This is an action brought under the Lanham Act, 15 U.S.C. § 1051, *et*
27 *seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*
28

1 **THE PARTIES**

2 2. Web 4 Half, LLC is a limited liability company organized and existing
3 under the laws of the state of North Carolina having its principal place of business at
4 2327 Englert Drive, Suite 302, Durham, North Carolina 27713.

5 3. Upon information and belief, Luxottica Group S.P.A. is a corporation
6 organized and existing under the laws of the Republic of Italy, having its principal
7 place of business at Piazzale Luigi Cadorna 3, Milan, 20123 Italy.

8 **JURISDICTION AND VENUE**

9 4. Web 4 Half's counterclaims arise under the Lanham Act, 15 U.S.C.
10 § 1051, *et seq.*, and the Federal Declaratory Judgment Act, 28 U.S.C. 2201–02.
11 This Court has original subject matter jurisdiction over Web 4 Half's counterclaims
12 pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. Personal
13 jurisdiction over Counter-Defendant Luxottica is based, *inter alia*, upon its consent
14 to jurisdiction as evidenced by its filing of the instant lawsuit in this District. As
15 reflected in the Complaint, there is an actual case and controversy between Web 4
16 Half and Luxottica.

17 5. Venue for Web 4 Half's counterclaims is proper in this District under
18 28 U.S.C. §§ 1391(b).

19 **GENERAL ALLEGATIONS**

20 6. Luxottica's complaint alleges that Web 4 Half infringed its "Wayfarer"
21 registered U.S. Trademark pursuant to 15 U.S.C. §§ 1114 and 1125(a).

22 7. Web 4 Half denies any alleged infringement of the asserted mark by
23 virtue of its answer and counterclaims.

24 8. Upon information and belief, numerous third parties throughout the
25 United States utilize the term "Wayfarer" in naming, advertising and promoting
26 their goods and services. These include numerous websites advertising sunglass
27 styles including a mid-century modern style of eyewear having trapezoidal lenses, a
28 thick frame, and protrusions along the upper corners referred to as "Wayfarers"

1 which are not affiliated with Plaintiff. For example, on the Zumiez website, a
2 variety of “Wayfarer” sunglasses are advertised. *See*
3 <http://www.zumiez.com/accessories/sunglasses/wayfarer.html>.

4 9. Similarly, on FRAMESDIRECT.COM, which is an on-line seller of
5 premium eyewear ([http://www.framesdirect.com/landing/a/mens-wayfarer-](http://www.framesdirect.com/landing/a/mens-wayfarer-eyewear.html)
6 [eyewear.html](http://www.framesdirect.com/landing/a/mens-wayfarer-eyewear.html)), “Men’s Wayfarer Eyeglasses” are advertised. These include frames
7 manufactured by Ray-Ban as well as Gucci, Chesterfield, Nike, and Superdry.
8 Under “Men’s Wayfarer Prescription Sunglasses,” the site advertises sunglasses
9 manufactured by Ray-Ban, Persol, and Maui Jim.

10 10. A search on Amazon.com for “Wayfarer sunglasses” shows both Ray-
11 Ban “Wayfarer” sunglasses as well as “Retro Rewind Classic Polarized Wayfarer
12 Sunglasses” by Retro Rewind, “Designer Wayfarer Sunglasses” by California,
13 “New Stylish Retro Vintage Wayfarer” sunglasses by Owl, “Wayfarer Sunglasses
14 Classic 80’s Vintage Style Design” by Retro Optix, “Wayfarer Sunglasses” by Eye
15 Love, “Retro Wayfarer” sunglasses by MoDA, “Wayfarer Sunglasses” by WearMe
16 Pro, and many other sunglasses styled as “Wayfarers.” *See* screen shot attached as
17 Exhibit 1.

18 11. Tom Ford’s website, www.tomford.com, advertises Henry Vintage
19 “Wayfarer” Sunglasses. *See* [http://www.tomford.com/henry-vintage-wayfarer-](http://www.tomford.com/henry-vintage-wayfarer-sunglasses/FT0248.html)
20 [sunglasses/FT0248.html](http://www.tomford.com/henry-vintage-wayfarer-sunglasses/FT0248.html).

21 12. Nordstrom Rack’s website advertises Bobby Roache Unisex Duomo
22 “Wayfarer” Sunglasses for sale for \$48.75. *See*
23 [https://www.nordstromrack.com/shop/product/1129966/bobby-roache-unisex-](https://www.nordstromrack.com/shop/product/1129966/bobby-roache-unisex-duomo-wayfarer-sunglasses)
24 [duomo-wayfarer-sunglasses](https://www.nordstromrack.com/shop/product/1129966/bobby-roache-unisex-duomo-wayfarer-sunglasses).

25 13. The House Outdoor Gear website advertises a pair of Granade
26 “Wayfarer” Sunglasses for \$25.00. *See* [http://www.the-house.com/sunglasses-](http://www.the-house.com/sunglasses-mens-wayfarer.html)
27 [mens-wayfarer.html](http://www.the-house.com/sunglasses-mens-wayfarer.html).

1 14. Lenskart advertises “Wayfarer” sunglasses made by various
2 manufacturers at a variety of price points which include Vincent Chase as well as
3 Ray-Ban. *See* [http://www.lenskart.com/sunglasses/frame-shape/wayfarer-](http://www.lenskart.com/sunglasses/frame-shape/wayfarer-sunglasses.html)
4 [sunglasses.html](http://www.lenskart.com/sunglasses/frame-shape/wayfarer-sunglasses.html).

5 15. Upon information and belief, Luxottica has not contested the use of
6 “Wayfarer” by the above identified third parties nor other third party users which
7 produce competing sunglasses described as “Wayfarers” for years.

8 16. Upon information and belief, Luxottica has long allowed competitors
9 and consumers to use the term “Wayfarer” as a generic name for a mid-century
10 modern style of eyewear having trapezoidal lenses, a thick frame, and protrusions
11 along the upper corners.

12 17. Upon information and belief, the advertising public and media have and
13 continue to use the word “Wayfarer” as a generic term for a mid-century modern
14 style of eyewear having trapezoidal lenses, a thick frame, and protrusions along the
15 upper corners.

16 18. Upon information and belief, the general public understands the word
17 “Wayfarer” to refer generally to a mid-century modern style of eyewear having
18 trapezoidal lenses, a thick frame, and protrusions along the upper corners, and does
19 not associate “Wayfarer” with any particular source.

20 **FIRST COUNTERCLAIM FOR RELIEF**

21 19. Web 4 Half re-alleges and incorporates by reference the allegations of
22 paragraphs 1 through 18 of its counterclaim above.

23 20. This is an action for a declaratory judgment of non-infringement of its
24 alleged “wayfarer” mark and further relief against Luxottica pursuant to 28 U.S.C.
25 2201 and 2202.

26 21. An actual controversy exists between Luxottica and Web 4 Half with
27 respect to Luxottica’s allegation of trademark infringement.

1 22. Specifically, Luxottica contends that Web 4 Half's use of the term
2 "Wayfarer" infringes on Luxottica's alleged mark.

3 23. Web 4 Half contends that the use of the term "Wayfarer" does not
4 infringe any enforceable mark of Luxottica and that Luxottica is not permitted to
5 restrict the use of the term "Wayfarer" because (a) the alleged mark is so common
6 as to be generic with respect to a mid-century modern style of eyewear having
7 trapezoidal lenses, a thick frame, and protrusions along the upper corners and (b)
8 Luxottica has failed to contest third party use of the term "Wayfarer" as a generic
9 term describing a mid-century modern style of eyewear having trapezoidal lenses, a
10 thick frame, and protrusions along the upper corners.

11 24. Luxottica's allegations of infringement pose a threat to Web 4 Half's
12 business and have and will continue to harm Web 4 Half until such claims are
13 resolved.

14 25. Web 4 Half has no adequate remedy at law and therefore seeks a
15 declaratory judgment pursuant to 28 U.S.C. §§ 2201–02 that Web 4 Half has not
16 infringed Luxottica's alleged "Wayfarer" mark.

17 26. Web 4 Half additionally seeks any further relief deemed appropriate by
18 this Court pursuant to 28 U.S.C. § 2202.

19 **SECOND COUNTERCLAIM FOR RELIEF**

20 27. Web 4 Half re-alleges and incorporates by reference the allegations of
21 paragraphs 1 through 26 of its counterclaim above.

22 28. Luxottica is the registrant of record for "WAYFARER," U.S. Reg. No.
23 595,513.

24 29. Web 4 Half believes that it has been and will continue to be irreparably
25 damaged by Luxottica's continued use and registration of this alleged mark for a
26 mid-century modern style of eyewear having trapezoidal lenses, a thick frame, and
27 protrusions along the upper corners because Luxottica has asserted the alleged mark
28 against Web 4 Half in this action.

30. Web 4 Half believes it has been and will continue to be damaged by Luxottica's continued use and registration of the alleged mark in connection with a mid-century modern style of eyewear having trapezoidal lenses, a thick frame, and protrusions along the upper corners because the primary significance of the alleged mark is and/or has become the generic name for the good for which it is registered.

31. Upon information and belief, the term “Wayfarer” is understood by the relevant public to be a generic term for a mid-century modern style of eyewear having trapezoidal lenses, a thick frame, and protrusions along the upper corners.

32. Upon information and belief, Luxottica had actual knowledge prior to filing the Complaint in this action that “Wayfarer” means a mid-century modern style of eyewear having trapezoidal lenses, a thick frame, and protrusions along the upper corners.

33. The term “Wayfarer” is generic within the meaning of Section 14 of the Lanham Act, 15 U.S.C. § 1064, when it is used in connection with a mid-century modern style of eyewear having trapezoidal lenses, a thick frame, and protrusions along the upper corners and is, therefore, unprotectable as a trademark for Luxottica’s goods.

34. Consequently, this Court should direct the United States Commissioner for Trademarks to cancel Luxottica's U.S. Trademark Registration No. 595,513 under 15 U.S.C. §§ 1064 and 1119.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Complaint, Web 4 Half respectfully requests of the Court:

1. That judgment be entered pursuant to 28 U.S.C. §§ 2201–02 that Web 4 Half has not infringed Luxottica’s alleged “Wayfarer” mark;

2. That judgment be entered pursuant to 15 U.S.C. §§ 1064 and 1119 that Luxottica's Trademark Registration No. 595,513 is invalid and that said mark be cancelled;

1 3. That judgment be entered in favor of Web 4 Half on all of Luxottica's
2 claims for relief pleaded in this action and that Luxottica recover nothing from Web
3 4 Half;

4 4. That Luxottica's requests for preliminary and permanent injunctions be
5 denied;

6 5. That Web 4 Half be awarded its attorneys' fees, costs and expenses
7 pursuant to 15 U.S.C. § 1117;

8 6. For judgment that:

9 a. Web 4 Half has not engaged in trademark infringement in
10 violation of 15 U.S.C. § 1114;

11 b. Web 4 Half has not engaged in false designation of origin in
12 violation of 15 U.S.C. § 1125(a);

13 c. Web 4 Half has not engaged in trademark dilution in violation of
14 15 U.S.C. § 1125(c);

15 d. Web 4 Half has not engaged in trademark infringement in
16 violation of the common law of the State of California; and

17 e. Web 4 Half has not engaged in unfair competition arising under
18 California Business & Professions Code § 17200; and
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DEMAND FOR JURY TRIAL

Defendant hereby demands a trial by jury on all claims, issues so triable.

Dated: Februarv 4. 2016

SHEPPARD. MULLIN. RICHTER & HAMPTON LLP

Bv

s/ Daniel N. Yannuzzi
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CERTIFICATE OF SERVICE

I hereby certify the following:

I am over the age of 18 years and am not a party to the above-captioned action. I am a registered user of the CM/ECF system for the United States District Court for the Southern District of California.

On February 4, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. To the best of my knowledge, all counsel to be served in this action is registered CM/ECF users and will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 4, 2016, in San Diego, California.

/s/ Daniel N. Yannuzzi
DANIEL N. YANNUZZI